



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAFAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

September 17, 2015

Chief Nicholas Metz
Chief of Police
Aurora Police Department
15151 E. Alameda Parkway
Aurora, Colorado 80012

Re: Officer involved shooting of Kavonda Payton by Officers Waters, Tilton and Marziano
APD Case number 2015-1892

Dear Chief Metz:

I have completed my review of the Officer Involved Shooting of Kavonda Payton by Officers Waters, Tilton and Marziano that occurred on January 15, 2015. The following are my factual and legal findings based on my review of Detective Alton Reed's investigation, police reports, audio and video recordings and the autopsy report.

On January 15, 2015, shortly before 10:30 p.m., Kavonda Payton robbed the Fast-N-Friendly Food Mart located at 138 Del Mar Circle, Aurora. Mr. Payton entered the store wearing a dark hoodie and red devil mask. He approached Krystal Muchow and Timothy Cheesebro, who were working behind the cashier's counter, pointed a black handgun at them, and demanded money. Ms. Muchow gave Mr. Payton cash from the register. Mr. Payton left the store on foot. Video surveillance at the Fast-N-Friendly recorded the robbery.

Ms. Muchow immediately called 911 and reported the robbery at 10:30 p.m. Ms. Muchow described the robber as wearing a black hoodie, beanie and devil mask. She also told 911 that he was armed with a black handgun. She reported the robber left on foot heading toward the Save-A-Lot grocery store parking lot. 911 dispatched two patrol cars to the Fast-N-Friendly and relayed the information provided by Ms. Muchow.

Officers responded to the Fast-N-Friendly and interviewed the victims. Ms. Muchow provided the same description of the robber that she previously gave to the 911 operator and added that he had a large ring on his right hand. Ms. Muchow described being robbed including the fact that she gave the robber approximately \$100 to \$150 from the register. Mr. Cheesebro also described the crime to the police and stated that he feared for his life.

Officer Waters responded to the robbery in a marked patrol car. In the CSL Plasma parking lot, just south of Fast-N-Friendly and Save-A-Lot, Officer Waters observed a car with its brake lights on but no tail lights. As Officer Waters drove through the parking lot the car began driving toward Peoria St. Officer Waters followed the car south on Peoria and east on 6th. The car was a

tan Chrysler Sebring, license plate 088-ZVD. At 10:36 p.m., Officer Waters aired the license plate and confirmed the car was not stolen. While following the car Officer Waters observed a head popping up and down in the backseat.

Officer Waters activated his emergency lights and pulled the car over on 6th Avenue between Peoria St. and Del Mar Circle. Once pulled over, Officer Waters shined his spotlight on the car and the back seat passenger sat up. Officer Waters approached the vehicle and observed two occupants in the car, a driver and a passenger who was sitting in the back seat. The driver was later identified as Antoine Spencer and the backseat passenger as Kavonda Payton. Mr. Payton was wearing a hooded sweatshirt. Officer Waters ordered the males to show their hands, the driver complied but the back seat passenger only showed one hand. Officer Waters drew his firearm and opened the back door to observe the passenger. Once the door was open Officer Waters saw that the passenger was holding cash. Officer Waters also observed a red devil mask in the pocket of the passenger's hooded sweatshirt and a large gold ring on his finger. Officer Waters gave additional orders to the passenger to show his hands but the vehicle sped off. During the traffic stop, Officer Tilton arrived as cover. After the car drove away Officer Waters told Officer Tilton that he saw the mask and "these are the guys." Both officers returned to their patrol cars and chased the fleeing suspects.

Mr. Spencer led Officers Waters and Tilton on a high speed chase east on 6th Avenue. Officer Marziano and Lt. Silver joined the chase with Officer Marziano in the lead position. Mr. Spencer drove the Sebring in excess of 90 miles per hour, weaving in and out of traffic and running red lights. At 6th and Chambers, Mr. Spencer ran a red light and struck a car driving through the intersection. During the chase, the Sebring was driving without headlights and taillights.

Even after hitting another occupied vehicle, Mr. Spencer kept fleeing from police and turned north on Tower Road. Tower Road north of 6th Avenue is a dead end dirt road. Shortly after turning onto Tower Road, Mr. Spencer made a U-Turn. Officer Marziano attempted to end the chase by driving his patrol car into the driver's side of the Sebring. Unfortunately, the crash did not disable the Sebring and Mr. Spencer continued driving south on Tower Road toward Officer Waters. Officer Waters drove his patrol car into the Sebring's passenger side pushing the car off the road into a ditch. After turning around, Officer Marziano struck the car again attempting to pin the doors closed.

Officers Marziano and Waters got out of their patrol cars and ordered Mr. Spencer and Mr. Payton to show their hands. Mr. Spencer put his hands up and complied with the officers' orders. Mr. Payton, on the other hand, crawled out of the driver's side rear window and fled east, running and stumbling, over a barbed wire fence.

Officers Marziano, Waters and Tilton observed the suspect holding a black handgun as he was fleeing. Officer Waters yelled "Don't move! Get your hands up!" Officer Marziano repeatedly told the suspect to drop the gun. Mr. Payton turned and raised the gun at the officers. Officer Marziano and Tilton described the gun in Mr. Payton's right hand, Officer Waters thought the gun was in his left hand. Officer Rossi had also arrived at the scene and observed Mr. Payton holding the gun in his right hand when he raised it at the officers. Officers Marziano, Waters and

Tilton fired their weapons. Officer Marziano fired four shots, Officer Waters fired one shot and Officer Tilton fired six times. Though I have no evidence as to which officer's or officers' bullets struck Mr. Payton, I do not believe that information is necessary to determine whether the officers used justifiable deadly physical force.

Officer Thull also responded to the chase and arrived after the Sebring had been disabled. Officer Thull's dash camera captured Mr. Payton crawling out of the Sebring and fleeing but he is only in view of the camera for a couple seconds. The video also captured Officers Marziano, Waters and Tilton standing near patrol cars and ultimately firing their weapons. The audio only recorded the patrol car's siren until Officer Thull left his patrol car. At that point, Mr. Payton had already crawled out of the Sebring and the audio captured the officers giving orders to the suspects and gunfire.

The officers were interviewed and each explained their decision to shoot. Officers Marziano, Waters and Tilton shot because they thought the suspect was going to shoot at them and they feared for their safety and the safety of the other officers.

After being shot, Mr. Payton took a couple steps and fell to the ground still holding the handgun. Officer Marziano held Mr. Payton at gunpoint while Mr. Spencer was taken into custody. After Mr. Spencer was arrested, Officer Thull approached Mr. Payton and ordered him to drop the gun but he did not comply. Eventually Mr. Payton's breathing became labored and the gun fell out of his hand. Officer Thull approached and moved the gun out of his reach. Once the firearm was safely removed officers secured the suspect and attempted to provide life saving measures.

Kavonda Payton was transported by ambulance to University Hospital Emergency Department. Mr. Payton died from his injuries and was pronounced dead at 11:17 p.m. by Dr. Ward-Gaines. On January 16, 2015 Dr. Garth Warran performed an autopsy on Mr. Payton. Mr. Payton was shot three times. One shot struck his left mid-back and perforated his lung, aorta, esophagus and inferior vena cava. The bullet trajectory was back to front, left to right and slightly upward. Another shot perforated his lower back and traveled through the wing of the right ilium and passed through the subcutaneous tissue and skin of the right hip. The trajectory was back to front and left to right. The third shot penetrated his left buttocks and then traveled into his right buttocks and became lodged in the right femur. The trajectory of this bullet was back to front and left to right. The trajectory of the bullet wounds are consistent with Mr. Payton running from the officers and turning and pointing the gun in their direction. Mr. Payton's blood and urine tested positive for alcohol and cocaine. Dr. Warren found the cause of death to be multiple gunshot wounds to the torso.

Antoine Spencer made a videotaped statement shortly after his arrest. He first claimed that Mr. Payton kidnapped him at gun point and forced him to drive the car. Later, he admitted that he was with Mr. Payton when he acquired the devil mask and that he was in the area to commit a robbery. Earlier, Mr. Payton sent a text message stating he was going to rob a gas station. Mr. Spencer told the police that Mr. Payton got out of the car holding the gun, ran from the police, and then pointed the gun toward the police. In the recorded interview, Mr. Spencer demonstrated how Mr. Payton raised the gun and pointed it at the police. Ultimately, Mr. Spencer described Mr. Payton as desperate and unstable because he couldn't pay his rent.

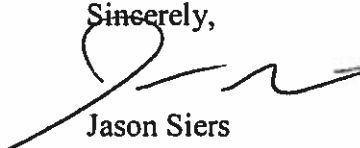
Crime Scene investigators documented, photographed and video recorded the scene. Officer Arntson searched Mr. Payton's pockets and found a clump of bills, totaling \$101, in his left pocket. Investigators seized Mr. Payton's gun and later examined it at the police department. They identified the gun as a Hi-Point 9mm, model C9, semi-automatic handgun. The gun had a loaded 9mm round in the chamber and seven additional rounds in the magazine. Officers searched the Sebring and found the red devil mask on the back passenger side floorboard.

In Colorado, peace officers may use deadly physical force when they reasonably believe it is necessary to defend against the imminent use of deadly physical force. 18-1-707(1)(a), C.R.S. Any person may use deadly physical force if they reasonably believe that the person poses an imminent danger of death or great bodily injury to another and a lesser degree of force is inadequate. 18-1-704(2)(a), C.R.S. Officers Marziano, Tilton and Waters only shot and killed Mr. Payton after he raised his firearm and pointed it in their direction. Mr. Payton's actions, in raising the firearm and pointing it at officers, posed an imminent danger of death or great bodily injury to the officers on scene. The officers all expressed fear that Mr. Payton was going to fire his weapon and they reasonably believed they were in imminent danger.

Peace Officers may also use deadly physical force to effect an arrest if they reasonably believe a person has committed a felony involving the use or threatened use of a deadly weapon. 18-1-707(2)(b)(I). In this case, the officers were aware that the suspect had just committed an Aggravated Robbery with a handgun at the Fast-N-Friendly Food Mart. Officers Marziano, Tilton and Waters reasonably believed that Mr. Payton committed that robbery so they attempted to arrest him. The Officers gave Mr. Payton every opportunity to surrender, as demonstrated by their treatment of Mr. Spencer, and only fired their weapons when Mr. Payton raised and pointed his firearm at the officers.

I find that Officers Marziano, Tilton and Waters lawfully shot and killed Kavonda Payton. The officers reasonably believed their lives were in imminent danger and acted in self-defense and defense of others pursuant to 18-1-707 and 18-1-704, C.R.S. Additionally, the officers were legally authorized to use deadly force to arrest Mr. Payton because he had committed an Aggravated Robbery with a deadly weapon. Accordingly, I find all three officers were justified in using deadly physical force.

Sincerely,



Jason Siers
Senior Chief Deputy District Attorney

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